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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/767,137

01/28/2004

Denise E. Paul

8498-3

4304

29941

7590

10/24/2005

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EXAMINER

MAGUIRE, LINDSAY MONICA

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/767,137

Applicant(s)

PAUL, DENISE E.

Examiner

Lindsay M. Maguire

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the magnet as described in claim 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claim 11 the applicant discloses that the base of the rack further comprises a magnet (claim 11, line 10). However, a magnet is not shown in the drawings nor is it described anywhere in the specification. Examiner is unsure of how this magnet is to be incorporated into the rack as disclosed. In order to expedite the prosecution of this application, claim 11 will be construed as if the magnet were anywhere on the rack.

#### ***Claim Suggestion***

Claim 5 is considered grammatically incorrect. In claim 5, lines 2-3, "and the at least one pair of resilient arms includes a pair of resilient arms extending from each base section" is set forth. It is suggested that claim 5 be amended to recite – and at least one pair of resilient arms extending from each base section -. Claim 5 is being construed as such for examination purposes. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 7, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Weterrings et al. U.S. Pat. No. 5,655,673.

Weterrings et al. discloses a rack for holding containers comprising: a base (10) having front and back sides; at least one pair of opposed resilient arms (22, 24) extending from the base front side, which have a first position for resiliently engaging a container (see Figure 1). The rack of Weterrings et al. also includes an adhesive on the back side (32) of the base (Column 3, Lines 11-12). The resilient arms of Weterrings et al. have spaced apart distal ends (22, 24), and have a second position to receive a container between these ends (see Figure 5). Weterrings et al. further discloses that the rack is formed of a polymeric material that is molded (column 2, Lines 52-53). In addition the arms (22, 24) of Weterrings et al. are curved (The device Weterrings et al. is fully capable of performing the function as set forth in Claims 1, 2, 4, 7, 9, and 10, see Figures 1, 3, and 5).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weterrings et al. in view of Eustis U.S. Pat. No. 1,571,000.

In regards to claim 3, Weterrings discloses a rack substantially as claimed except for at least one hole in the base for receiving a fastener. However, Weterrings does disclose an adhesive fastening means (column 3, Lines 11-12). Eustis discloses holes for receiving attaching nails or screws (column 2, Lines 62-63), therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Weterrings et al. for basic reasons such as, additional fastening means, security, to support more weight without falling, stability, etc.

In regards to claim 8, Weterrings et al. discloses a rack substantially as claimed except for it being formed of metal. Eustis discloses a rack made of metal (column 1, Lines 36-38), therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Weterrings et al. for basic reasons such as durability, manufacturability, economics, stability, economics, etc.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weterrings et al. in view of Lechleiter U.S. Pat. No. 5,375,726.

Inasmuch as the claim is best understood (in view of the claim suggestion above), Weterrings et al. discloses a rack substantially as claimed except for a plurality of base sections, that are separable, defined by notches in the base. However Weterrings et al. does disclose a plurality of clips projection outwardly from the panel (column 2, lines 65-67) and that the rack can be made longer or shorter depending on

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the use to which it is put (column 2, lines 56-57). Lechleiter discloses adjacent arm portions that are connected together by a frangible portion of the linear device, each frangible portion being breakable along a line parallel to the arm portions (column 2, lines 37-40), therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a plurality of notches on the rack device of Weterrings in view of the teachings of Lechleiter in order to permit adjusting of the length for various sized cabinets or applications.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weterrings et al. in view of Hsiao U.S. Pat. No. 6,571,966.

Insomuch as the claim is best understood (in view of the rejection under 35 USC § 112, as advanced above) Weterrings et al. discloses a rack device substantially as claimed above except for a magnet on the base. Hsiao discloses a rack with a magnetic member fixed to the rear wall (column 3, lines 39-40), therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to include a magnet on the base of the rack of Weterrings et al. in view of the teachings of Hsiao.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weterrings et al. in view of Lechleiter U.S. Pat. No. 5,375,726.

Weterrings et al. discloses a rack as advanced above with the exception of beveled portion adjacent to each row of racks and operable to separate each respective row. However Weterrings et al. does disclose a plurality of clips projection outwardly

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from the panel (column 2, lines 65-67) and that the rack can be made longer or shorter depending on the use to which it is put (column 2, lines 56-57). Lechleiter discloses adjacent arm portions that are connected together by a frangible portion of the linear device, each frangible portion being breakable along a line parallel to the arm portions (column 2, lines 37-40), therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a plurality of notches on the rack device of Weterrings in view of the teachings of Lechleiter in order to permit adjusting of the length for various sized cabinets or applications. Additionally, it would be obvious to one of ordinary skill in the art to combine a plurality of individual racks for such basic reasons as to make a wall of racks, to accommodating more containers in one area, etc.

### ***Conclusion***

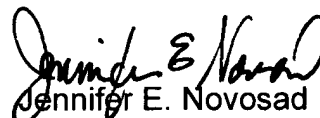
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsay M. Maguire whose telephone number is 571-272-6039. The examiner can normally be reached on M-F: 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

LMM  
10/20/05